

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 92-214
Table of Allotments	)	RM-8062
FM Broadcast Stations	)	RM-8144
(Columbia, Bourbon, Leasburg,	)	RM-8145
Gerald, Dixon and Cuba, Missouri)	)	RM-8146
	)	RM-8147

To: Chief, Allocations Branch  
Mass Media Bureau

DOCKET FILE COPY ORIGINAL

**MOTION TO SEVER**

Zimmer Radio of Mid-Missouri, Inc. ("Zimmer"), licensee of Station KCMQ(FM), Columbia, Missouri, by counsel and pursuant to Section 1.41 of the Commission's rules, hereby submits its motion to sever the grant of Zimmer's Channel 244C1 allotment upgrade at Columbia from this proceeding. In support of this motion, the following is stated:

I.

**Preliminary Statement**

On November 24, 1995, the Commission released a Report and Order in this proceeding in which it granted a petition for rulemaking filed by Al Greenfield d/b/a The Greenfield Group, Zimmer's predecessor-in-interest, seeking the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and the corresponding modification of Station KCMQ(FM)'s authorization. In addition, the Commission announced it would (i) substitute Channel 231A for Channel 244A at Bourbon, Missouri; (ii) allot Channel 221A to Dixon, Missouri; and (iii) allot Channel 297C3 to

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Cuba, Missouri, as that community's second FM broadcast service, and make the channel available for application. 10 FCC Rcd 12624 (1995) ("Report and Order").

## II.

### The Channel 244C1 Upgrade at Columbia No Longer Conflicts With the Remaining Proposals In This Proceeding

In order to accommodate Zimmer's proposed upgrade from Channel 244C3 to 244C1 at Columbia, Missouri, the Notice of Proposed Rule Making in MM Docket No. 92-214, 7 FCC Rcd 6230 (Aud. Serv. Div. 1992) ("Notice"), proposed to either substitute Channel 297A for the vacant Channel 244A allotment at Bourbon, Missouri, or delete the Bourbon allotment altogether. Although Lake Broadcasting, Inc. ("Lake"), filed an application for Channel 244A at Bourbon during the pleading cycle in this proceeding, as a result of the Commission's substitution of Channel 231A (rather than 297A as proposed in the Notice) for Channel 244A at Bourbon, there is no longer a conflict between the allotment at Bourbon and the Channel 244C1 upgrade at Columbia. Indeed, as the Commission noted in its Report and Order, Lake is entitled to cut-off protection and will have an opportunity to amend its application to specify operation on Channel 231A. Moreover, although Lake's application for Channel 244A at Bourbon is short-spaced to Station KSHE(FM), Channel 243C, Crestwood, Missouri, Lake may utilize the contour protection provisions contained in Section 73.215 of the rules, or amend its application to specify a new site. In any event, Lake did not challenge the allotment of Channel 231A to Bourbon in its Petition for Reconsideration, filed in this proceeding on January 11, 1996. Therefore, the Channel 244C1 upgrade at Columbia does not conflict with the allotment of Channel 231A at Bourbon.

In addition, as a result of the allotment of Channel 221A to Dixon, Missouri, the Channel 244C1 upgrade at Columbia no longer conflicts with the counterproposal filed in this proceeding by

Central Missouri Broadcasting, Inc. ("Central Missouri"), to allot Channel 243A to Dixon. In its Petition for Reconsideration, filed in this proceeding on January 16, 1996, Central Missouri contends that the allotment of Channel 221A to Dixon and the resulting site restriction to the west of the community will make the proposed station economically unviable. See Petition for Reconsideration, p. 3. However, this argument is made without support and is without merit. Indeed, Central Missouri has had constructive notice since the commencement of this proceeding that its counterproposal might "cause the Commission to allot a different channel than was requested for any of the communities involved." Notice of Proposed Rulemaking, in MM Docket No. 92-214, 7 FCC Rcd 6230, 6231 (Aud. Serv. Div. 1992) (Appendix). See also Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pinewood, South Carolina), 5 FCC Rcd 7609, 7610 (1990). Moreover, Central Missouri's economic viability argument amounts to nothing more than a site preference for which the Commission has repeatedly held is not entitled to protection in a rulemaking proceeding. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Las Vegas, Nevada), 59 RR 2d 1330 (Mass Med. Bur. 1986) (an applied for but unauthorized transmitter site reflects only a preference for a particular location which is not entitled to protection from a rulemaking proceeding); FM Table of Assignments (Andalusia, Alabama), 49 Fed.Reg. 32201 (August 13, 1984) (same). Even assuming, arguendo, Central Missouri's argument had some legal validity, the counterproponent failed to proffer any factual support for its naked assertion that the 6.8 kilometer (4.2 mile) site restriction to the west of the community will render the station economically unviable. Therefore, because Central Missouri's argument that the Commission should allot Channel 243A to Dixon, rather than Channel 221A, must be rejected, the Channel 244C1 upgrade at Columbia is no longer in conflict with the allotment of Channel 221A to Dixon.

The allotment of Channel 221A to Dixon also is not contingent upon the final resolution of MM Docket No. 89-120. Although Lake has suggested that Channel 221A be substituted for Channel 272A at Waynesville, Missouri, to eliminate a conflict with another counterproposal in MM Docket 89-120, Lake's suggestion was contained in its reply comments. See Report and Order, 10 FCC Rcd at 12626 n.11. Thus, because Lake's suggestion that Channel 221A be allotted to Waynesville is not entitled to cut-off protection, the allotment of that channel to Dixon is in no way dependent upon the final resolution of MM Docket No. 89-120.

Furthermore, as demonstrated in the attached engineering statement, Channel 264A apparently is available at either Dixon or Waynesville, which would provide an alternative means of severing the Channel 244C1 upgrade at Columbia from the Dixon allotment.<sup>1</sup>

Finally, the Channel 244C1 upgrade at Columbia does not conflict, either directly or indirectly, with the deletion or retention of Channel 271A and the allotment of Channel 297C3 at Cuba, Missouri. As indicated in Zimmer's Supplemental Comments, filed September 28, 1995, Zimmer has withdrawn its expression of interest in the Cuba channel, and did not file an application for Channel 297C3 during the recent filing window. Although the specified coordinates for Channel 297C3 at Cuba conflict with Lake's proposed substitution of Channel 297A for Channel 271A at Cuba, and the substitution of these channels at Cuba is necessary to accommodate Lake's proposed upgrade of its

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<sup>1</sup> It is Zimmer's understanding that the only potential impediment to the availability of Channel 264A concerns a counterproposal filed in MM Docket 90-66, seeking to upgrade Station KNSX(FM), Steelville, Missouri, from Channel 227C2 to Channel 227C1. It is unlikely, however, that this counterproposal will be successful due to the proponent's failure to include a verifying affidavit. Moreover, although the Commission's records are not clear, the upgrade at Steelville also may require the downgrading of Station KYLC(FM), Osage Beach, Missouri, from Channel 228C3 to 265A. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lincoln, Osage Beach, Steelville and Warsaw, Missouri), 8 FCC Rcd 4915 (1993); 7 FCC Rcd 3015 (1992).

Station KBMX(FM), Eldon, Missouri, from Channel 270A to 270C1 in MM Docket 89-120, the Commission has determined that in a petition for reconsideration filed by Lake in that proceeding, Lake stated it would be willing to accept a Class C2 upgrade at Eldon, which would not require a related channel substitution at Cuba. Indeed, Lake has filed a one-step application for a Class C2 facility at Eldon (File No. BPH-930922IE), which remains pending. See Report and Order, 10 FCC Rcd at 12626, n.12. Therefore, the Channel 244C1 upgrade at Columbia does not conflict with the allotment of Channel 297C3 to Cuba.

### III. Conclusion

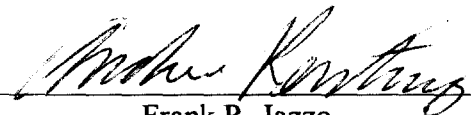
As demonstrated herein, the grant of the Channel 244C1 upgrade at Columbia, Missouri, is no longer in conflict with the allotment of channels at Bourbon, Dixon, or Cuba, Missouri. Although Lake and Central Missouri have filed petitions for reconsideration of the Report and Order, resulting in an automatic stay of the allotment changes pursuant to Section 1.420(f) of the Commission's rules, Zimmer notes that this proceeding has been pending before the Commission for over three and one-half years. Moreover, as demonstrated in the Joint Further Reply Comments filed in this proceeding on January 13, 1993, the proposed operation of Station KCMQ(FM), Columbia, on Channel 244C1 will provide service to 335,000 people in a land area encompassing 16,435 square kilometers. This represents an increase in population served of 186,495, or 226% of the 148,505 people to receive service from the facilities authorized in KCMQ's modified construction permit (BMPH-920901ID). Furthermore, the Channel 244C1 upgrade will result in an increase in land area covered of 12,090 square kilometers, or 378% of KCMQ's modified construction permit coverage of 4,345 square kilometers.

The Commission itself has recognized the detriments caused by the automatic stay provision of its rules, and has proposed to eliminate the automatic stay. See Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stay of Certain Allocations Orders, 10 FCC Rcd 7753 (1995). Therefore, because imposition of the automatic stay in this case will impose an unwarranted delay in the provision of a significantly improved service to the public, Zimmer respectfully requests that the grant of the Channel 244C1 allotment upgrade be severed from this proceeding so that the allotment is effective upon grant of this motion, and Zimmer can implement the upgrade immediately thereafter.

WHEREFORE, in light of the foregoing, Zimmer Radio of Mid-Missouri, Inc., respectfully requests that this Motion for Severance be GRANTED.

Respectfully submitted,

ZIMMER RADIO OF MID-MISSOURI, INC.

By:   
Frank R. Jazzo  
Andrew S. Kersting

Its Counsel

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Rosslyn, Virginia 22209

February 15, 1996

TECHNICAL EXHIBIT  
PREPARED ON BEHALF OF  
ZIMMER RADIO OF MID-MISSOURI, INC.  
CONCERNING MM DOCKET NO. 92-214

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of Zimmer Radio of Mid-Missouri, Inc., licensee of FM station KCMQ on channel 244 (96.7 MHz) at Columbia, Missouri. As part of the Commission's **Report and Order** in MM Docket 92-214<sup>1</sup>, channel 244C1 was substituted for channel 244C3 at Columbia, Missouri and the construction permit for KCMQ was modified to specify operation on channel 244C1. Furthermore, channel 221A was allotted to Dixon, Missouri in that proceeding.

Petitions for reconsideration of the **Report and Order** in MM Docket 92-214 were filed by Lake Broadcasting, Inc. (Lake) and Central Missouri Broadcasting, Inc. (CMB). These technical comments were prepared in response to those petitions to demonstrate that channel 264A is available as an additional channel at Dixon or as a substitute channel at Waynesville, Missouri. In addition, it will be demonstrated that the differences in population and area provided by Lake concerning the upgrade of KBMX from Class C2 to Class C1 at Eldon, Missouri are flawed.

As noted in the **Report and Order** at footnote 11, the allotment of channel 221A at Dixon conflicts with

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<sup>1</sup> Adopted October 27, 1995, released November 24, 1995, DA 95-2250.

Lake's suggested use of channel 221A as an alternative channel substitution at Waynesville, Missouri for channel 272A in its pending petition for reconsideration in MM Docket No. 89-120. However, it has been determined that channel 264A is apparently available at either Dixon or Waynesville. This would remove the conflict with Lake's petition for reconsideration in MM Docket No. 89-120.<sup>2</sup>

Figure 1 is a separation study for channel 264A at Dixon, Missouri from a presumed reference site. As can be seen in the tabulation, the minimum distance separations are met with respect to all stations and allotments.

Figure 2 is a separation study for channel 264A from the existing transmitter site of station KJPW-FM which currently operates on channel 272A at Waynesville, Missouri. As shown, the minimum distance separations are met with respect to all stations and allotments.

Figure 3 is a 1:250,000 scale topographic map showing the area to locate channel 264A in compliance with the Commission's minimum separation requirements. The Dixon city limits, channel 264A allotment reference point and Class A city coverage limit are identified. The Dixon city limits are based on information contained in the 1990 US Census for Missouri. The most distant point of the Dixon city limits from the channel 264A allotment

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<sup>2</sup> The allotment of channel 264A to Waynesville would also eliminate any apparent conflict Lake's suggested substitution of channel 221A at Waynesville has with the recent channel 221A allotment at Ava, Missouri which was implemented by the **Report and Order** in MM Docket No. 91-352.



reference site is approximately 11 kilometers. The predicted 3.16 mV/m principal city contour for a maximum facility Class A station (6 kW, 100 meters) extends approximately 16 kilometers. This satisfies the Commission's allotment requirements.

Figure 3 also depicts the existing KJPW-FM transmitter site. As shown, the KJPW-FM site is located in the fully-spaced area for channel 264A. Furthermore, KJPW-FM currently operates with facilities which are less than the "old" Class A equivalent (3 kW/100 m), whereas operation on channel 264A would be permitted from its existing site with the "new" Class A equivalent (6 kW/100 m). Therefore, operation on channel 264A would comply with the Commission's allotment requirements.

The area and population differences for the KBMX upgrade from Class C2 to C1 at Eldon, Missouri set forth by Lake in its petition for reconsideration are flawed. Specifically, Lake incorrectly states that the upgrade of KBMX from C2 to C1 will result in a 300% difference in area and a 400% difference in population. The error results from understatement of the area and population within KBMX's proposed Class C2 operation which will implement the Class C2 allotment at Eldon.<sup>3</sup> Lake indicates that the Class C2 60 dBu contour contains 67,275 persons within 5,027 square kilometers. However, our

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<sup>3</sup> KBMX's pending application, BPH-930922IE, proposes to operate as a Class C2 station on channel 270 from its current site with a nondirectional effective radiated power of 48 kW and an antenna height above average terrain of 154 meters. These facilities are "equivalent" to the Class C2 maximum (ERP 50 kW/HAAT 150 meters).

calculations indicate that the proposed Class C2 60 dBu contour contains 149,462 persons within 8,553 square kilometers. The error apparently resulted from miscalculation of the distances to the Class C2 60 dBu contour depicted on page 2 of Exhibit A of the Lake petition for reconsideration.<sup>4</sup> Therefore, the KBMX Class C2 to C1 upgrade will result in an 82% difference in area and an 80% difference in population. It is further noted that the KBMX upgrade from Class A to C2 will result in a 267% difference in area and a 279% difference in population.

The population to be served within the proposed KBMX Class C2 60 dBu contour was determined by a computer program which totals the population within census enumeration districts located within the contour. The 1990 Census was employed. The land area within the 60 dBu contour was determined by numerical integration.

*W. Jeffrey Reynolds*

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February 14, 1996

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<sup>4</sup> The area and population figures for the KBMX Class A (2,332 square kilometers, 39,446 persons) and C1 (15,565 square kilometers, 269,040 persons) operations contained in Lake's petition for reconsideration appear to be correct.

Figure 1

FM SEPARATION STUDY

Job Title :Proposed Dixon Ch 264A Allotment Separation Buffer 32 km

FCC DB Date : 02/01/96

Channel 264A (100.7 MHz)

Coordinates : 37-54-36 92-03-35

Call	City	Channel	ERP(kW)	Latitude	Bearing	Dist.	Req.
Status	State	FCC File No.	Freq.	HAAT(m)	Longitude	deg-Tru	(km)
KJMO	Jefferson City	261C2	33.0	38-31-25	336.1	74.60	55
LIC	MO	BLH910606KE	100.1	183.0	92-24-25	19.60	CLEAR
KUKUFM	Willow Springs	262C2	50.	37-03-49	178.3	93.99	55
LIC	MO	BLH890511KA	100.3	150.0	92-01-39	38.99	CLEAR
KKCA	Fulton	263A	6.0	38-51-58	4.9	106.54	72
LIC	MO	BMLH900718KB	100.5	91.0	91-57-15	34.54	CLEAR
KZMM	Troy	264A	6.0	39-03-13	35.7	157.25	115
LIC	MO	BLH931123KB	100.7	100.0	90-59-47	42.25	CLEAR
KMZU	Carrollton	264C1	99.	39-21-59	324.6	199.57	200
LIC	MO	BLH900917KA	100.7	302.0	93-24-12	-0.43	CLOSE <sup>1</sup>
KGMO	Cape Girardeau	264C	100.	37-22-16	104.3	231.05	226
LIC	MO	BLH920629KF	100.7	301.0	89-31-52	5.05	CLOSE
KYLC	Osage Beach	265A		38-07-29	294.0	59.26	72
PADD	MO	RM7139	100.9	.0	92-40-39	-12.74	SHORT <sup>2</sup>
Petition for Recon filed 920616 in D90-66							
KTUIFM	Sullivan	265A	3.00	38-11-42	67.2	82.91	72
LIC	MO	BLH810223AG	100.9	84.0	91-11-12	10.91	CLOSE
KTXR	Springfield	267C	100.	37-11-40	224.4	110.83	95
LIC	MO	BLH920625KB	101.3	360.0	92-56-04	15.83	CLOSE

\*\* End of separation study for channel 264A \*\*

<sup>1</sup> Complies with the minimum distance separation requirements of Section 73.207 when rounded to the nearest whole kilometer pursuant to Section 73.208.

<sup>2</sup> The proposed substitution of channel 265A for 228A at Osage Beach was denied in Docket 90-66.

Figure 2

FM SEPARATION STUDY

Job Title :Proposed KJPW-FM Ch. 264A Allotment Separation Buffer 32 km

FCC DB Date : 02/01/96

Channel 264A (100.7 MHz)

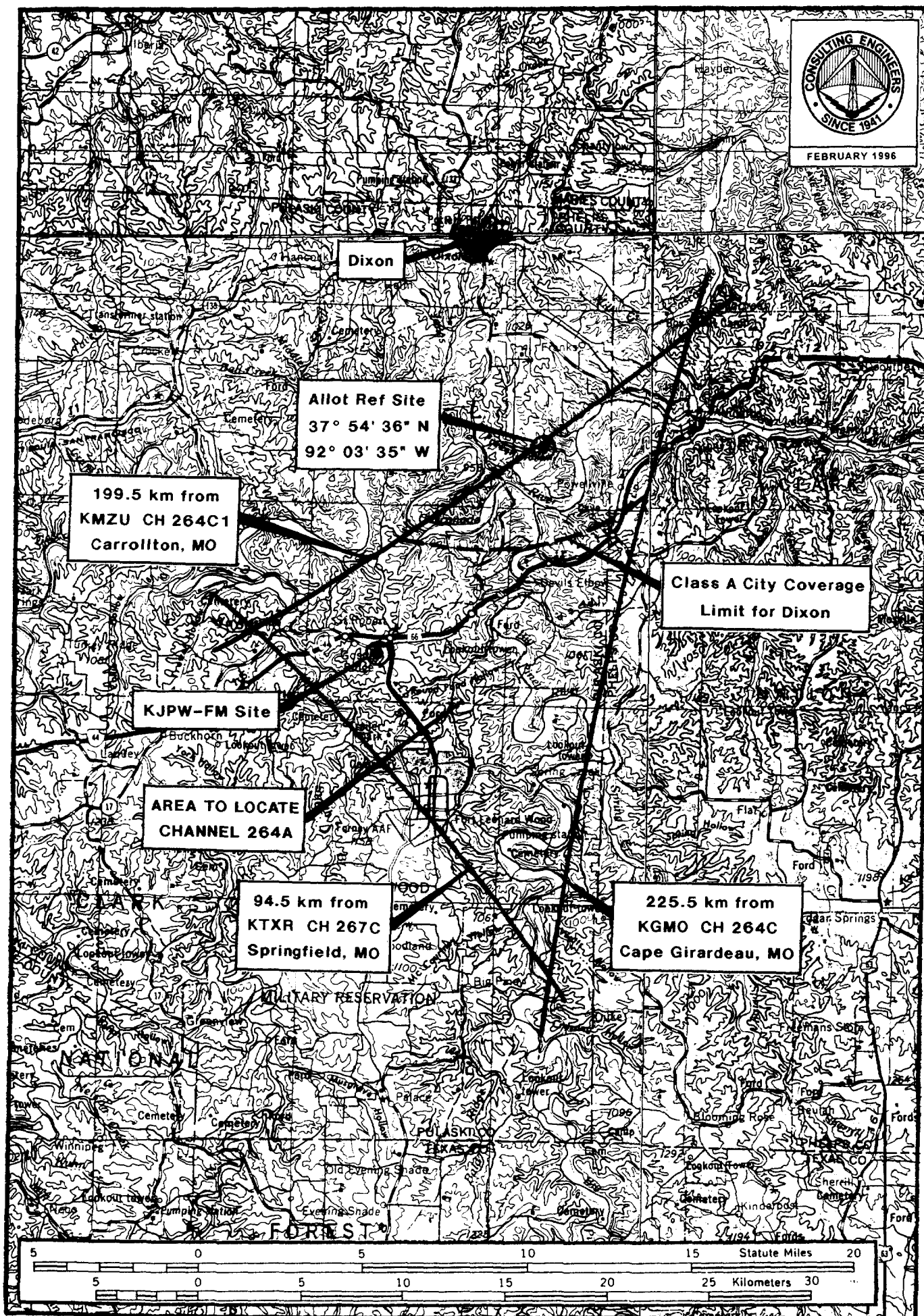
Coordinates : 37-49-09 92-09-06

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KTTK LIC	Lebanon MO	BLED910429KB	210A 89.9	0.39 46.0	37-40-34 92-40-50	251.3	49.25 39.25	10 CLEAR
KJMO LIC	Jefferson City MO	BLH910606KE	261C2 100.1	33.0 183.0	38-31-25 92-24-25	344.2	81.34 26.34	55 CLEAR
KUKUFM LIC	Willow Springs MO	BLH890511KA	262C2 100.3	50. 150.0	37-03-49 92-01-39	172.5	84.58 29.58	55 CLEAR
KKCA LIC	Fulton MO	BMLH900718KB	263A 100.5	6.0 91.0	38-51-58 91-57-15	8.4	117.50 45.50	72 CLEAR
KZMM LIC	Troy MO	BLH931123KB	264A 100.7	6.0 100.0	39-03-13 90-59-47	35.9	170.16 55.16	115 CLEAR
KMZU LIC	Carrollton MO	BLH900917KA	264C1 100.7	99. 302.0	39-21-59 93-24-12	328.1	203.45 3.45	200 CLOSE
KGMO LIC	Cape Girardeau MO	BLH920629KF	264C 100.7	100. 301.0	37-22-16 89-31-52	101.4	236.72 10.72	226 CLOSE
KYLC PADD	Osage Beach MO	RM7139	265A 100.9	.0	38-07-29 92-40-39	306.6	57.33 -14.67	72 SHORT <sup>1</sup>
Petition for Recon filed 920616 in D90-66								
KTUIFM LIC	Sullivan MO	BLH810223AG	265A 100.9	3.00 84.0	38-11-42 91-11-12	63.4	94.47 22.47	72 CLEAR
KTXR LIC	Springfield MO	BLH920625KB	267C 101.3	100. 360.0	37-11-40 92-56-04	225.1	97.98 2.98	95 CLOSE

\*\* End of separation study for channel 264A \*\*

<sup>1</sup> The proposed substitution of channel 265A for 228A at Osage Beach was denied in Docket 90-66.

Figure 3



**CERTIFICATE OF SERVICE**

I, Andrew S. Kersting, hereby certify that on this 15th day of February, 1996, copies of the foregoing "Motion to Sever" were mailed first class, postage prepaid, to the following:

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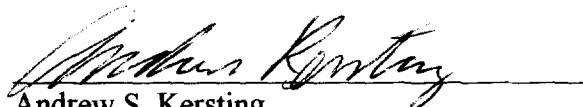
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